

Bristol City Council

Minutes of the Public Safety and Protection Committee



15 November 2016 at 10.00 am

Members Present:-

Councillors: Donald Alexander, Sultan Khan (Chair) and Paula O'Rourke (Not In Attendance for Agenda Item 9)

Officers in Attendance:- Carl Knights, Lynne Harvey, Emma Lake and Jeremy Livitt

1. Welcome, Introductions and Safety Information

At the beginning of each application, the Chair asked each party to introduce themselves.

2. Apologies for Absence and Substitutions

Apologies for absence were received from Councillor Chris Windows.

3. Declarations of Interest

There were no declarations of interest.

4. Minutes of Previous Meeting

Resolved – that the Minutes of the meeting held on 20th September 2016 be confirmed as a correct record and signed by the Chair.

5. Public Forum

There were no Public Forum Statements for this meeting.



6. Suspension of Committee Rules CMR10 and 11

Resolved – that Committee Procedure Rules relating to the moving of motions and the rules of debate (CMR10 and 11) be suspended for the duration of the meeting.

7. Exclusion of Press and Public

Resolved – that under s.100A(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item(s) of business on the grounds that it (they) involve(s) the likely disclosure of exempt information as defined in paragraph(s) 1 (respectively) of Part 1 of schedule 12A of the Act.

8. Report of an Application for the Grant of a Private Hire Vehicle Seeking Departure From Bristol City Council Policy - MR

The Committee inspected MR's vehicle before the hearing.

The Applicant made the following comments:

- (1) The applicant did not currently have enough money for a vehicle which met the Council's criteria
- (2) If the application was approved, after 6 months to 1 year he would have enough money to pay for a deposit for a vehicle;
- (3) The applicant maintained the vehicle properly and kept it clean.

The Committee pointed out that they needed to be careful in their decision to avoid setting a precedent.

The Applicant was requested to withdraw while the Committee made their decision.

Resolved – that, since the vehicle meets existing vehicle emission tests and has been maintained in a reasonable condition, the existing licence is renewed for 1 year (2 six-monthly licences) on the expectation that by the time the licence is renewed, the applicant will have either obtained a new vehicle or ensure their existing vehicle complies with Council policy.

9. Report Of An Application For the Grant Of A Hackney Carriage Driver Licence Seeking Departure From Council Policy - HZ

The Chair made introductions and outlined the procedure.

The Senior Licensing Officer reported that the applicant had received the 2 following convictions:

20 March 2013 - Offence Assault Occasioning Actual Bodily Harm (ABH) on 10 November 2012

.



22 October 2014 – Using a Vehicle Uninsured Against Third Party Risks on 15 March 2014 and for acting as a driver of a Hackney Carriage Vehicle without a HCD Licence. This conviction was not declared on HZ's Application Form.

Members noted that in accordance with the Council's policy on offending behaviour, the starting point was that an applicant for a Hackney Carriage Licence would need to be between 5 to 10 years free of conviction before being reconsidered for a licence, with a refusal being required for ABH for 5 years.

HZ made the following points during questioning:

- He had made a mistake and been punished for it.
- He had worked for the community for 15 years in a variety of jobs, such as First Bus and for a security firm and had never had any problems until the 2013 incident
- He had been working long hours and was trying to pay off debts
- He acknowledged that there had also been 2 additional complaints against him during the last 3 years
- He was not aware when he lost his licence that his insurance was also cancelled
- If his application was requested, he requested that he should be exempted from a requirement to take a language test.

The Panel noted that any individual who drove a car without a licence was in breach of the policy.

Following a short adjournment, the Committee made the following decision:

Resolved – that in accordance with section 59 of the Local Government (Miscellaneous Provisions) Act 1976 the Committee are not satisfied that HZ is a fit and proper person to hold a Hackney Carriage Driver's Licence due to convictions that he received as outlined above on 20th March 2013 and 22nd October 2014 and that he had not discharged the burden of proving that an exception should be made to the policy in this instance. They also noted with concern that HZ had also received 2 separate complaints made against him.

10 Report of an Application For The Grant Of A Private Hire Driver Licence Seeking Departure From Council Policy - ZK

The Committee noted that the applicant was requesting an exemption from the gold standard for driving which was a requirement of someone seeking a Private Hire Driver Licence on the grounds that they had previously been driving for 27 years and believed it was not necessary.

The applicant made the following comments:

- (1) In the past, he had been a Private Hire Driver for 2.5 years followed by a long period as a Hackney Carriage Driver;
- (2) He acted in a courteous manner towards passengers in his previous chauffeur work, as well as working for functions such as weddings and with disabled people;



- (3) He had been born in Bristol and had a very good knowledge of the city.

The Committee noted the importance of the gold standard as one that should be maintained as a general rule to avoid a precedent being set.

However, it was noted that the wording of the existing 2012 legislation on this issue was unfortunate as it did not specify the key factors required for the gold standard ie length of service etc.

They also noted that, in the case of the applicant, they would need to give up 4 days loss of earnings to complete the course.

Resolved –

- (1) That, in view of the significant past experience of the applicant as a Private Hire and Hackney Carriage Driver, an exception is made to grant this licence without requiring the gold standard course to be taken;**
- (2) That the Sub-Committee requests that the issue of the existing legislation relating to the gold standard is urgently addressed via a report to the full Committee**

11 Report of An Application For Renewal Of A Hackney Carriage Driver Licence Seeking Departure From Council Policy - MB

The Chair made introductions and outlined the procedure.

The Senior Licensing Officer reported the following:

- This item was originally considered by members of this committee on 20th September 2016 where the matter was adjourned on the basis that MB was due to attend a further hospital appointment.
- MB applied to renew his HCD licence on 15 June 2016. His licence expired on 1st July 2016.
- Prior to submitting his renewal application MB supplied a medical examination report which was due to be provided at licence renewal. The report detailed that MB had suffered from cardiac arrhythmia, congenital heart disorder and heart valve disease. Dr Barbara Dunning who completed the report had initially declared that MB met the DVLA Group 2 Entitlement of Fitness to Drive. Upon examining the report Officers considered that further information was required and sent the letter to Dr Dunning to seek clarification.
- On 11th May 2016 and 31st May 2016 responses were received from Dr Dunning and advising that MB did not meet the Group 2 Entitlement of Fitness to Drive.
- Members' attention was drawn to the fact that the latest medical assessment had indicated that his left heart ventricle was operating at 25 to 30% capacity, less than the minimum of 40%

MB made the following points during questioning:



- He had been a bus driver for 23 years and a taxi driver for 16 years in Bristol;
- Following a heart operation and medication which he had been prescribed, he had felt well and did not need to visit his GP;
- He was generally healthy. The barrier to his application was the policy that the Council followed concerning his medical condition
Councillors expressed sympathy for the applicant but pointed out that they were bound by the medical advice they received and the need to protect the public from any potential harm.

Following a brief adjournment to discuss the application, the Committee

Resolved – that the application to renew the HCD is refused on the ground of “any other reasonable cause” in accordance with Section 61(1) (b) of the Local Government (Miscellaneous Provisions) Act 1976.

12 Report Of An Application For The Renewal of A Hackney Carriage Driver Licence - AN

The Sub-Committee received additional supporting evidence from SARI (Support Against Racist Incidents) concerning this application.

In addition to the applicant, the following people attended the hearing to support him:

Mark Linehan – Solicitor

Ramon Billal – Witness

Adrius Adni – Project Worker – SARI

The Senior Licensing Officer advised that there had been 2 offences reported:

17th July 2015 – Common Assault

20th November 2015 – Property Damage

It was a requirement that HCD drivers should be free of any conviction from violence for 5 to 10 years.

The following points were made on behalf of the applicant:

- (1) There were unusual circumstances in this case
- (2) The policy states that an HCD driver must be a fit and proper person and a safe risk to the public;
- (3) There is a discretion available to the Council to award an HCD licence and make an exception to the policy if the applicant is deemed a fit and proper person;
- (4) The applicant had pleaded guilty to the charges on the day of the trial;
- (5) In the case of Mottenham City Council v Farroukh, where an appeal is lodged a Committee is entitled to consider how the offences took place;
- (6) At the time that he pleaded guilty to the charges, he did not plead guilty to the offence and the Facebook posts in the paperwork which were an important aspect of the case were not available;



- (7) At the trial, an independent observer had noted that, whilst AH had been calm and polite, the person who had accused him of assault had made racist comments;
- (8) AN had touched the accuser to attract his attention and should not have resulted in a conviction for a criminal offence;
- (9) At the time of the alleged assault, AN had taken photos and made a non-emergency contact with the Police. When this had happened, no complaint had been made. Only later was a complaint made with 2 witnesses. At the time it had been understood that the witnesses were independent. However, one was a friend of the accuser and the other regularly visited the accuser's shop;
- (10) At the time of the alleged incident, AN had not been operating as a taxi driver. He had behaved in a clam and peaceful manner whilst his vehicle remained blocked. Since the accuser had repeatedly ignored him, AN had placed a hand on his shoulder to attract his attention – as he would normally do as part of the Egyptian culture. A touch is de minimus and does not amount to an assault. AN was never charged with any verbal insults;
- (11) When the photo of the vehicle was shown to the Police Officer, it showed no damage to it;
- (12) Page 30 of the additional bundle of papers indicated that AN had immediately called the Police following the incident which was not in keeping with someone who had kicked the accuser's vehicle as alleged;
- (13) Since there was no counter-complaint at the time, AN had not pursued the matter further. He was frightened of the individual and wanted to have nothing more to do with him;
- (14) In addition, his mother was gravely ill in Egypt and, since he was preoccupied with this, he did not wish to pursue this matter further. A translation of his mother's medical records and a certified copy of the death certificate of his father were available;
- (15) By July/August 2015 he had deleted the photo and, since had already discussed the matter with the Police and there had been no further complaint, he thought the matter was resolved;
- (16) When AN had made the original complaint to the Police, none of the racist material on Facebook was available;
- (17) When AN had been received a caution, he had not realised its significance as the interpreter had translated what the Police had said as "this is not a punishment – however, if there is a further offence it will be revisited". He did not believe he had been convicted and therefore did not record this on the application form;
- (18) Taken together, AN's behaviour (early disclosure, attending the Police station etc) did not suggest there had been any deliberate concealment;
- (19) AN had been driving since 2013 and was with Mendip District Council in 2014 and 2015, in addition to his licence with Bristol City Council. AN had numerous references from his work in Cambridge, in NVC Customer Service, with Easyjet and as a diver in Sharm El Sheikh;
- (20) AN had been advised at the stage of the renewal of the licence on 20th October 2016 to disclose the incidents and had therefore done so. However, this was not solicited by any formal body and would otherwise have not been revealed until the formal renewal in 2018;
- (21) Up until 2010, AN had received no criminal convictions in Egypt.

AN and all the other attendees were asked to withdraw while the Sub-Committee made a decision.

Resolved – that the Sub-Committee



- (1) noted the November 2015 decision in the Magistrates Court but could not go behind the decision in the Magistrates Court but were willing to make an exception to Council policy in this case and accepted that there were strong mitigating circumstances;
- (2) noted the details of the offending conduct and had pleaded guilty to assault but also noted the circumstances concerned and that the conviction was at the lowest level possible within the court system;
- (3) noted that AN had been racially abused and had not re-offended since the incident in question and on the balance of probability thought that there was no deliberate attempt at concealment of the conviction in his mind;
- (4) do consider him to be a fit and proper person and agreed to renew the application for a Hackney Carriage Driver Licence.

13 Urgent Item - Report of a Hire Driver Arrested Following an Allegation Of Sexual Assault

The Chair accepted this as an urgent item (Agenda Item 14) as the Police had only recently advised that the driver in question had been arrested on 14th November 2016 and had been bailed until 19th November 2016. Therefore, a decision was urgently required before this date.

Mr Damon Whitlove (Reese Solicitors) was in attendance to present the case for the driver accused of this offence

The Senior Solicitor advised members of the following:

- (1) The accused had advised the Licensing Office on 14th November 2016 that he had been arrested and interviewed following an allegation of a sexual assault. He had been arrested on 19th September 2016 and interviewed on 20th September 2016;
- (2) Officers recommended that the individual was suspended in accordance with Section 61 2B of the Local Government Miscellaneous Provisions Act 1976 on the grounds of any other reasonable cause.

The accused's solicitor requested that the Sub-Committee consider that members agree a condition to allow him to work in the day time only and agree to avoid females or any young persons travelling alone.

Members expressed concern that these proposed conditions would be impossible to enforce and that, in any event, the allegations were serious enough in themselves to warrant a suspension of the licence.

The Solicitor advised the Sub-Committee that case law does not require that members wait for an outcome of the criminal case before they make a decision.

Resolved (unanimously) – that there is “reasonable cause” to suspend the accused’s Private Hire Driver’s Licence as he is currently the subject of a very serious allegation involving an assault on a 15 year old girl in his Private Hire Vehicle.



The matter is currently under investigation by the police and the accused has been released on bail until 19 November 2016.

Given the seriousness of the allegation the committee have also resolved to invoke the power under section 61(2B) of the Local Government (miscellaneous Provisions) Act 1976 in that in the interests of public safety the suspension should take effect immediately and shall continue until midnight of the day of the next PSP Sub-Committee A of 24th January 2017.

14 Date of Next Meeting

Members noted that the next meeting of the PSP Sub-Committee B is scheduled for 10am on Tuesday 24th January 2017.

Meeting ended at 4.00 pm

CHAIR _____

